O. Prisons/51

1951.

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File No.

Legal Department

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Subject:—

Opinions Under the Indian Prisons Act, 1894

2-11/60

O. Prisons/51

File No.

Gen. 194 e.

669-A

C O N T E N T S.

Legal Department File No. O. Prisons/1951

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Office of the R.L.A.

An application for parole being one for suspension of sentence falls under section 401, Criminal Procedure Code. Under sub-section (1) of section 401, the Government may impose conditions for the suspension of sentence. Under sub-section (3) the Government may cancel the suspension of sentence if in its opinion any of the conditions on which suspension was given is not fulfilled. Therefore, the Government may make it a condition of parole that the application for parole shall not contain a statement which is false. Having laid down that condition, if an application for parole is found to contain a false statement, the parole, if not yet granted, may be refused and if granted may be cancelled. That is the only punishment feasible under the provisions of law. As the application for parole does not fall under the Indian Prisons Act(Act IX of 1894), a false statement in that application cannot be punished under any of the provisions of the said Act.

Id./..... 11/7

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U.R. to H.D. No. 11046, dated the 12th July 1951.

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Legal Department.

Release of prisoner dangerously ill.

Rule 455, Jail Manual and Section 59(7) of the Prisons Act, 1894.

Section 59(7) of the Prisons Act(Act IX of 1894) permits the State Government to make Rules consistent with the Act "defining the circumstances and regulating the conditions under which pris oners indanger of death may be released". The rules made under that provi sion are found in Chapter XVII of the Bombay Jail Manual, Part I(Revised Edition 1945). Rule 455 which is relevant to the question und- -er consideration lays down the conditions under which a prisoner serving sentence in the prison and in danger of death may be released. Inrespect of prisoners whose unexpired portion of sentence exceeds six months the authority to pass orders for release is Government. In respect of the prisoners whose unexpired portion of sentence does not exceed six months the authority to order release is the District Magistrate, subject to the subsequent sanction of Government. But if the District Magis'rate is not in favour of granting release, then he has to submit papers to the Commissioner of the Division who may either order conditional relea se or submit the case for orders of Government. In the City of Bombay, the officer correspondin to the District Magistrate is the Chief Preside ncy Magistrate.

2 The question for H.L.A.'s considerati is whether, in respect of such prematurely rele sed prisoners whose unexpired portion of senten is less than six months, it is possible to secu re that the release is conditional.

3 Under the present rule, although the District Magistrate in the Districts(and the Chief Presidency Magistrate in Bombay) is entit

-ed to release the prisoners, provided the other conditions relating to seriousness of illness of the prisoners are satisfied, that release is subject to the subsequent sanction of Government. Besides, no such prisoner is, under the rule, to be released unless the prisoner's friends are willing to look after him and are prepared to pass a security bond to the effect that inthe event of the prisoner being prematurely released on account of illness they will give him up at any time they may be required to dose. The release, therefore, under the present rule is, in fact, conditional and may cease to have effect from the date Government refuses sanction to the release, with the result thatthe prisoners'/s friends will have to give up the prisoner and on their failure to do so the bond passed by them can be enforced.

4 There is, no doubt, nospecific provision under the Rule how the prisoner is to be got back into prison if his friends do not give him up, but having regard to the fact that his release was subject to their bond and to the condition that it was to be subsequently sanctioned by Government, it would follow, as a necessary corollary on the analogy of section 401(3) of the Criminal Procedure Code, that if the subsequent sanction is refused the prisoner, if not given up, can be arrested and remanded to undergo the unexpired portion of the sentence. If, however, thought necessary a specific provision to that effect may be made in Rule 455 itself.

Id./.....

Additional Secretary to Government.

U.R. to H.D. No. 14318, dt. the 7th September 1951.

SMR 22-6-58. 4 Copies.

Breach of Parole of furlough conditions. Prisons Act, 1894. R.L.A's opinion No. 11046 dated 12-7-1951.

Legal Department.

In his opinion No. 11046 dated the 12 th July 1951, R.L.A. had advised that afalse statement in an application for parole cannot be punished under any of the provisions of the Prisons Act, 1894. Home Department now states that Government have already issued orders that prisoners who overstay their furlough or parole or commit a breach of any of the conditions of release should be punished by forfeiture of remi ssion, of canteen concessions and of the privile -ge of writing letters. Home Department consider that these punishments cannot strictly be awarded as the offences are not committed within the prison. The R.L.A. is, however, requested to advise.

2 Home Department further states that when prisoners are conditionally released on parole or furlough they are at present required to given an undertaking agreeing to cancellation of suspension of sentence in case of breach of conditions. Home Department proposes that a condition may be inserted in this agreement by adding suitable words to the undertaking or by adding a separate condition to the effect that "The prisoner will, on his return to jail, be liable to be punished if during the suspension he committed a breach of the aforesaid condition or any portion of them". R.L.A. is requested to advise whether any such amendment or insertion of condition will legalise the position.

3 If this is found to be insufficient, the Home Department requests the R.L.A. to advise some other course which would give a legal basis to the punishments as it is absolutely necessary tha

prisoners who commit a breach of the conditions of furlough or parole should be punished.

4 The punishments provided for in Rule 743 of the Jail Manual including withdrawal of the privilege of remission and other jail privileges etc. can only be awarded for prison offecnes under the Prisons Act, 1894. A breach of the conditions of release is not a prison offence under Rule 742 or section 45 of the Prisons Act and therefore, the breech cannot be punished as a prison offence by awarding the penalties prescribed in Rule 743.

5 As regards the suggestion of Home Department of inserting a condition in the agrrement of the prisoner, it appears that any such condition would be without legal authority. In granting furlough or parole Government exercises its powers under section 401 of the Criminal Procedure Code and if any condition subject to which the sentence is suspended is brokern the cancellation of the suspension is already provided for in sub-section (3) of section 401. That section does not, however, provide for any other penalty for breach of the conditions subject to which the sentence has been suspended. Further under the Prisons Act punishments can only be awarded for prison offences. (section 46, and 59(3) of the Prisons Act). It appears, therefore, that awarding of such punishments can not be legalised by an agreement with the prisoner.

6 If punishments or penalties appear necessary suitable amendment will have to be made inthe Prisons Act by introducin at the

proper place an independent section providing that the breaches of conditions of furlough and parole will be liable to be punished with certain specified penalties and that the said punishment shall be determined upon and given by the [redacted]-Superintendent It cannot be done by making rules under section 45(1) of the Act. For that sub-section contemplates only declaration by rules of breach of " any regulation of the prison" to be a prison offence. Conditions attached by Government to an order for suspension of the sentence under section 401 Criminal Procedure Code cannot be regarded as regulations of the prison, breach of which can be declared under section 45(1) as prison offences.

Id./.....

Additional Secretary to Government.

U.R. to H.D. 14071, dated 1-9-1951.

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4 Copies.

LEGAL DEPARTMENT.

Furlough-grant of

Prisons Act,

In his opinion No. 1911 dated the 17th February 1949, R.L.A. has already advised that provision for the furlough and the remission may best be made by the rules under the Prisons Act; and for that purpose it would be safter to amend section 59 of the Act conferring power tomake rules for granting furlough, the condition onwhich it is to be granted and for shortening of the sentences in consequences. It appears that under [redacted] instructions from Government the Inspector-General of Prisons has at present framed Rules for grant of furlough(vide his No. 20012, dated 6-10-1949). But these Rules have no statutory authority at present as there is no specific provision in the Prisons Act for granting of furlough. To place the matter on a statutory basis the Act will have to be amended as advised by the R.L.A.

Id./.....

Additional Secretary to Governmen

U.R. to H.D. No. 15816, dated the 5th October 1951.

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Appeals to Supreme Court from Jail.

Rule 468 of the Jail Manual which is framed under section 59(24) of the Prison Act, 1894, provides as follows:-

"A prisoner can appeal only once to a Judicial Court; the order of the Appellate Court is final. If the prisoner wishes to move a higher court for the revision of the proceedings in his case, action must be taken by his friend or agent. The Prison authorities cannot act in the matter".

This rule is in conflict with Rule 4 of XXI the Supreme Court Rules, 1950. That Rule enacts:

"The appellant, if he is in jail, may present his petition of appeal and the accompanying documents to the officer-in-charge of the jail, who shall forward them t the Registrar of this Court".

The question for consideration is whether th provisions of Rule 468 of the Jail Manual ar overridden by the Supreme Court Rules.

2 Rule 468 of the Jail Manual might be a valid Rule Vis-a-vis section 59(24) of the Prisons Act, 1894. But if it is in conflic with the Supreme Court Rules, it will have to give way to the Supreme Court Rules which have to be followed in respect of appeals to the Supreme Court. The Supreme Court Rules are framed by the Supreme Court under Articl 145(1) of the Constitution with the approval of the President and under Article, 144 of t Constitution all authorities, civil and judi -l, in the territory of India are required t act in aid of the Supreme Court. The Supre Court Rules will therefore have to be follo

in respect of appeals to the Supreme Court notwith standing the fact that they are in conflict with the Rule made by the State Government under the Prisons Act, 1894.

Id./.....

Additional Secretary to Government.

U.R. to H.D.No. 16381, dated the 16th October 1951.

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The Home Department has raised questions for R.L.A.'s advice in its note dated 12th October 1951.

The first question that is referred to R.L.A. is whether exclusion from remission system for a specified period or permanently which is a major jail punishment can be awarded for breach of conditions of parole or furlough committed outside the prison. Ordinary remission is granted under rule 758 of the Jail Manual "for good conduc-t and scrupulous attention to all prison regulations"; while special remission is granted for special services of the nature specified in Rule 769. Further under Rule 772, additional remission is permissible for a prisoner who has not committed any prison offence whatever. Under Rule 743, the punishment of exclusion from the privi-lege of remission system can be awarded only for prison offences and under Rule 746(b) it is considered a major punishment. It is already held by the Additional Secretary inhis opinion No. 14071 dated the 1st September 1951, that breach of the condition of release is not a prison offence and the punishment of exclusion from the remission system cannot therefore be awarded for the said breached. Further the phrase "good conduct and scrupulous attention to all prison regulations" in Rule 758 appears to refer to conduct in the prison itself and not outside; and breach of the

conditions outside the prison cannot be taken into consideration, except by stretch ing the language, for considering the conduct of the prisoner.

. Thenext question for consideration is whether breach of conditions of release can be said to be an offemse of "disobeying any lawful order of an officer of the prison or omitting or refusing to perform duties inthe manner prescribed" within the meaning of Rule 742(43). The conditions of release are imposed by Government under section401 Criminal Procedure Code and not by an officer of the prison and consequently breach of any of them would not fall under the Rule 742(43).

The third question for consideration is whether the prisoner can be punished for "answering untruthfully any question put by an officer of the prison "within the meaning of Rule 742(6), if the Jail Official asks him to state whether the contents of his application are true and the prisoner replies in the affirmative, and subsequently they are found to be false. It is obvious that if the procedure indicated in the Home Department note in this connection is followed it would be possible tohold that the prisoner has committed the offemse of answering untruthfully and hecan be awarded a suitable punishment sanctioned by the Rules.

Id./.... 13/12

Remembrancer of Legal Affairs.

U.R. to H.D., N°. 1038-Confl., dated the 14th December 1951.

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